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September 16, 2015

VIA ECF

Hon. Andrew J. Peck, U.S.M.J.  
Southern District of New York  
Daniel Patrick Moynihan Courthouse  
500 Pearl Street, Courtroom 20D  
New York, New York 10007

Re: *Rio Tinto plc v. Vale S.A., et al.*, Civil Action No. 14-cv-3042 (RMB) (AJP) (S.D.N.Y.)

Dear Judge Peck:

We write in response to Rio Tinto's letter of today's date (Dkt. No. 348) regarding the privilege issue.

1. As we have pointed out in earlier correspondence repeatedly, Rio Tinto's suggestion that it has only disclaimed privilege for pre-April 30, 2010 communications with the UK investigators is made of whole cloth. There is nothing in its statements to the Court that we have previously quoted, nor in the Court's previous ruling, that supports this arbitrary limitation.

2. Whether there is a "handful" of communications between its counsel and the investigators "in the course of the evaluating a potential lawsuit within limitations" or not (and we do not know how many there are, because they have not all been logged yet), Rio Tinto's disclaimer again does not contain any limitation with regard to "evaluating a potential lawsuit," as opposed to investigating the facts relevant to such a lawsuit. Moreover, the investigators have submitted sworn statements to the High Court in the proceedings regarding this Court's Letters of Request, specifically *denying* that they had been retained for purposes of litigation. *See, e.g.*, Tr. 149:17-151:2 ("Rio Tinto did not retain ARC for litigation but to provide investigative reports."). The only way to get to the bottom of this is to be able to ask the witnesses questions about what they were retained to do, what they in fact did, and what their communications with Rio Tinto regarding this work were, which again Rio Tinto has previously denied even involved

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its counsel. *See* Jan. 13, 2015 Tr. 51:11-15 (“The law firms did not run that [investigation]. They were independent people.”).

This playing fast and loose with the facts and Rio Tinto’s own statements to the Court is deplorable. The witness examinations in London should go forward pursuant to the Order this Court previously entered on the question of privilege. For our part, we agree that we will assert no subject matter waiver on the basis of any answers the witnesses give to questions regarding their communications with Rio Tinto prior to the filing of the complaint in this action, but Rio Tinto’s efforts to impede these examinations with baseless privilege assertions at this late date should not be accepted.

Respectfully submitted,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Jonathan I. Blackman

cc: All counsel of record